

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT APPEAL NO : 818 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated
07/04/2005 in WP NO:6797 OF 2005 on the file of the High Court.)

Between:

A.Nageswari, W/o. B.Simhagiri Swamy,
O/o. District Manager, A.P.State Housing Corp. Ltd.
Srikakulam District.

... APPELLANT

AND

1 A.P.State Housing Corporation Ltd., rep. by its Mangaing

Director, Urdugally, Himayatnagar, Hyderabad.

2 The Govt. of A.P., rep. by its Secretary, Housing Dept.,
A.P. Secretary, Hyderabad.

3 The Director General, Anti Corruption Bureau (ACB),
Abids, Nampally, Hyderabad.

4 A.P.State Housing Corp. Ltd., rep. by its District Manager,
Srikakulam District.

...RESPONDENTS

Counsel for the Appellant:MR.S.SATYAM REDDY

**Counsel for the Respondent Nos.1&4: Mr.K.Mohan Rami Reddy, Standing
Counsel for State Housing Corporation.**

Counsel for the Respondent No.2:G.P. for Housing

Counsel for the Respondent No.3: Mr.V.Ravi Kiran Rao, S.C. for ACB

The Court at the stage of admission made the following :

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI

AND

THE HON'BLE SRI JUTICE L. NARASIMHA REDDY

WRIT APPEAL NO.818 OF 2005

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JUDGMENT: (Per L. Narasimha Reddy, J.)

The petitioner in W.P.No.6797 of 2005 filed this writ appeal aggrieved by the dismissal of the writ petition in limini.

The appellant was employed in the year 1983 as Assistant Engineer, with the 1st respondent. Later on, she was promoted as Deputy Executive Engineer in the year 1998. She was placed under suspension through orders dated 05-03-2005, passed by the 1st respondent. The appellant challenged the same by filing the writ petition. One of the main contentions urged by the appellant was that the 1st respondent passed the impugned order on the directions issued by the 2nd respondent, Government of A.P., through its Secretary, Housing Department, and that there was no independent application of mind. She also contended that the 1st respondent did not undertake any independent verification and examination of the matter, and in that view of the matter, the impugned order is vitiated. Reliance was placed on the judgment of this Court in ***D. Ramesh Sinha v. Cadre for Key Personnel of Cooperative Central Banks/apex Bank, Hyderabad***¹. The learned single Judge of this Court agreed with the principle relied upon by the appellant, but took the view that it does not apply to the facts of the case. It was observed that the 1st respondent took into account some more material, in addition to the letter, addressed by the

Government, in issuing the order of suspension.

Sri S.Satyam Reddy, learned counsel for the appellant submits that a perusal of the order of suspension discloses that the only material that constituted the basis for passing the same, by the 1st respondent, was the letter dated 22-02-2005, addressed by the 2nd respondent, and that there did not exist any other material. He contends that even assuming that the 1st respondent took into account any other material, while passing the order of suspension, the same should be evident from the order itself, and that it is not open to him to supplement it, by way of pleadings, assertions or by reference to the record.

Sri K. Mohan Rami Reddy, learned Standing Counsel for the 1st respondent submits that, by its very nature, the order of suspension is not required to be elaborate, and the appellant cannot expect the 1st respondent to undertake extensive discussion, in the order of suspension. He also contends that the 1st respondent categorically stated in the impugned order itself that he has considered the available material in arriving at the conclusion, to place the appellant under suspension.

The scope of interference by the High Court, in exercise of jurisdiction under Article 226 of the Constitution of India, with the orders passed by an employer, placing an employee under suspension, is very limited. Even if a different view is possible, on merits, the Court cannot find fault with the discretion exercised by the employer. However, it is permissible for the Court to examine the matter with certain settled principles of law, such as jurisdiction of the authority, who issued the order; independent application of mind, by such authority, and existence, as distinguished from adequacy of material for passing such orders. In the instant case, it is not in dispute that the 1st respondent has the jurisdiction to place the appellant under suspension.

The principal contention urged on behalf of the appellant is that the 1st respondent did not arrive at an independent conclusion, of his own, while passing the impugned order. According to her, it came to be passed only on the directions issued by the 2nd respondent.

Before discussing the matter on merits, certain principles, which are laid down by the Supreme Court and this Court, which are relevance for this case, need to be

noted.

Placing an employee under suspension, is the exclusive prerogative of the appointing authority. Though the action of suspension, pending enquiry, does not visit an employee with any punishment, it would have its own impact, on such person, from the point of view of suffering detriment and loss in terms of reputation. Before placing an employee under suspension, the employer should form an opinion that it is not in the interest of the establishment to permit such employee to continue to work. The conclusion should be based on his own assessment of the matter. The employer cannot act to the dictates of the superiors, howsoever important the matter may be. The note of caution needs to be added to the effect that, mere existence of an advice or direction, from a superior authority, by itself, does not vitiate an order of suspension. As long as it is evident from the order itself, that in addition to taking such directive into account, the employer had applied his mind and examined the matter, by himself.

It is true that an appointing authority is not supposed to undertake extensive discussion, in an order of suspension, as to the facts that led to the passing of the same. However, the fact that the employer took into account several aspects of the matter, must be evident from such order itself. He cannot be permitted to state that he had in fact, examined the matter by independent application of mind, unless the same is reflected in the order itself, nor can he be permitted to supplement such plea by making reference to record.

Reference in this context may be made to the judgment of the Division Bench of this Court in ***D. Ramesh Sinha v. Cadre for Key Personnel of Cooperative Central Banks/apex Bank, Hyderabad*** (1 *supra*).

The principle in this regard was subsequently stated by Justice Vivian Bose, in his enviable style, in ***Gordhandas Bhanji v. State of Bombay*** (AIR 1952 SC 16) held as under:

“Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself”.

The Constitutional Bench of the Supreme Court followed this principle, in verbatim, in ***Mohinder Singh v. Chief Election Commissioner*** (AIR 1978 SC 851).

Reverting to the facts of the case, on a perusal of the order dated 05-03-2004, it is evident that the only reference made is a letter dated 22-2-2005, addressed by the 2nd respondent. The impact of relevance of this letter, vis-à-vis the impugned order, is evident from the following sentence, occurring in the impugned order.

“The Government have issued instructions vide reference cited, to place the individual under suspension”.

The conclusion of the 2nd respondent followed immediately, namely, that “*it is considered that the continuance of the petitioner in the office will prejudice the investigation.*”

The copy of the letter dated 22-2-2005, addressed by the 2nd respondent, which constituted the basis, is also filed as material papers. The 2nd respondent referred to the recommendations of the Director, ACB., on the basis of a surprise check, said to have conducted on 26-08-2003. The Government, in turn, is said to have accepted the recommendations of the Director, ACB. Had it been a case where the Government accepted the recommendations of ACB, and permitted the appointing authority, to proceed further, there would not have been any occasion to take an exception for this Court to scrutinize the issue further. The 2nd respondent proceeded further and directed that the appellant and two others be “placed under suspension, pending enquiry, immediately” and that the compliance be reported to the Government. The 1st respondent was hardly left with any discretion, nor was he permitted to apply his mind independently.

As observed in the preceding paragraphs, mere existence of a recommendation or direction by a superior authority to an appointing authority, to place an employee under suspension, does not vitiate the matter, if the appointing authority applied his mind to the facts of the case. Except making a reference to the letter dated 22-02-2005, addressed by the 2nd respondent, the 1st respondent did not rely upon any other material. The vague assertion is made to the effect that he has undertaken a

careful consideration of available material. There was not even a reference to the report of ACB or any other complaint, in the order of suspension. The assertion on behalf of the 1st respondent that he had examined the matter, in detail, cannot be accepted, unless such examination can be culled out or discerned from the impugned order itself. On this short ground, the writ appeal and consequently the writ petition are allowed and the impugned order dated 05-03-2005, placing the appellant under suspension is set aside. It is however, left open to the 1st respondent to pass fresh orders, if the circumstances warrant, and proceed further in accordance with law.

There shall be no order as to costs.

T. MEENA KUMARI, J.

L. NARASIMHA REDDY, J.

Dt. 21-04-2005.

KO

To

One Fair Copy to the Hon'ble Smt.Justice T.Meena Kumari

(For her Lordship's kind perusal)

One Fair Copy to the Hon'ble Sri.Justice L.Narasimha Reddy

(For his Lordship's kind perusal)

1 The Managing Director, A.P.State Housing Corporation Ltd.,

Urdugally, Himayatnagar, Hyderabad.

2 The Secretary, Govt. of A.P., Housing Dept.,
A.P. Secretary, Hyderabad.

3 The Director General, Anti Corruption Bureau (ACB),
Abids, Nampally, Hyderabad.

4 The District Manager, A.P.State Housing Corp. Ltd.,

Srikakulam District.

5 2 C.Cs to the Govt.Pleader for Housing, High Court buildings,

Hyderabad (OUT)

6 8 L.R.Copies.

7 The Under Secretary, Union of India, Ministry of Law, Justice &

Company Affairs, New Delhi.

8 The Secretary, A.P.Advocates Association Library,

High Court buildings, Hyderabad.

9 Two C.D. copies.